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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,069	02/12/2007	Adrian Podoleanu	742408-9	7422
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NIXON PEABODY, LLP			COOK, JONATHON	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,069	<b>Applicant(s)</b> PODOLEANU, ADRIAN
	<b>Examiner</b> JONATHON D. COOK	<b>Art Unit</b> 2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 April 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-93 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8,52-59 and 93 is/are rejected.
- 7) Claim(s) 9-51 and 60-92 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/06)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **Detailed Action**

### **Drawing Objections**

The drawings are objected to because they are of poor quality and the labels are difficult to read at best. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification Objections**

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in

upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

#### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).

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- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where

elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing: See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities: The specification quality is so poor that it is difficult to read. The examiner requests a

substitute specification be submitted. Further, the sections as delineated above must be titled correction of this is required.

Appropriate correction is required.

### **Information Disclosure Statement**

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **Claim Objections**

Claims 9-52 & 60-92 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim *should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim*. See MPEP § 608.01(n). Accordingly, the claims 9-52 & 60-92 have not been further treated on the merits.

Claims 1, 4, 6, 53-55, 57, & 93 are objected to because of the following informalities: the term "channel spectrum" is ill defined in both the claims and the specification and thus the limitation is ill defined. For purposes of examination the

examiner will construe this to mean the spectral dispersion produced when the interfered reference and object beam are spectrally dispersed.

Claim 55 is objected to because of the following informalities: "using *the* object" is an improper antecedent basis since this is the first iteration of the object in the claim.

Appropriate correction is required.

Claims 3 is objected to because of the following informalities: the term "optic-optic modulator" is ill defined in both the claim and the specification and thus the limitation is ill defined. For purposes of examination the examiner will construe this to mean that the modulator includes and optic to optic transfer of the beam to vary the path length.

### **Claim Rejections - 35 USC § 102**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8 & 53-59 are rejected under 35 U.S.C. 102(e) as being anticipated by **de Boer et al (PGPub 2005/0018201) (de Boer).**

Regarding **Claims 1, 4-7, & 53-58**, de Boer discloses and shows in **fig. 3** an apparatus and method for Spectral Domain optical coherence tomography, comprising:

a sample arm (**208**) (applicant's object optics) arranged to transfer a beam from the light source (**202**) (applicant's optical source) to a tissue sample (**130**) (applicant's target object) to produce an object beam;

a reference arm (**206**) (applicant's reference optics) arranged to produce a reference beam;

a mechanism (**270**) (applicant's displacing means) arranged to displace at least one of the object beam and the reference beam to step the reference arm (**206**) length over a distance (applicant's relatively displaced object beam and relatively displaced reference beam) and where the mechanism (**270**) can utilize stretching an optical fiber (applicant's displacing means arranged to move the relative positions of the object fiber and reference fiber ends), free space translational scanning using a piezoelectric transducer (reflection), or via a grating based pulse shaping optical delay line (diffraction) to create the displacement (**Paragraphs 81 & 89**);

a grating (**212**) (applicant's optical spectrum dispersing means) arranged to receive the two relatively displaced beams and to disperse their spectral content onto a detector array (**216**) (applicant's reading element);

the stepping of the reference beam will create a phase delay (applicant's intrinsic optical delay) between the two wavefronts (applicant's wavetrains) of the object beam and reference beam and these combined beams are then spectrally dispersed by the grating (**212**) to create a channeled spectrum of the optical path difference in the interferometer on the reading element;

wherein as can be clearly seen in the **fig. 3** the reference and sample arm include fiber optics to transmit the reference and sample beam.

Regarding **Claim 2**, de Boer discloses the mechanism (**270**) may involve free space translational scanning using a piezoelectric transducer (**Paragraph 89**). This would involve scanning a mirror (applicant's another of at least two reflective elements) in the reference arm and reflecting the object beam off the sample (applicant's one of at least two reflective elements).

Regarding **Claim 3**, de Boer discloses the aforementioned and further shows in **fig. 3** the reference beam being transferred from a lens (not labeled) to a reflecting mirror which may be modulated by a piezoelectric transducer. This arrangement meets the limitation of the displacing means comprises an optic-optic modulator.

Regarding **Claims 8 & 59**, de Boer discloses and shows in **fig. 3** the aforementioned further, after the reference arm (**206**) is clearly shown a collimating lens as part of the displacing means, thus is met the limitation of altering the diameters of at least one of the object beam and reference beam.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over **de Boer**.

Regarding **Claim 93**, de Boer discloses the aforementioned. Further, a first optical path and second optical path and interface optics are shown (see modified figure 3);

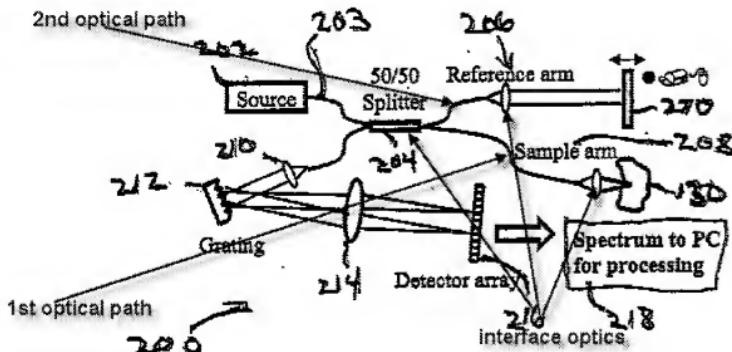
de Boer fails to show a third optical path where the optical output beam from the object are transferred to the displacing means;

However, de Boer does disclose optionally using phase modulators such as acousto-optic, electro-optic, or the like. These would lend themselves to having both the reference and object beam displaced which is an obvious modification that the examiner takes official notice is well known to one of ordinary skill in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have a third optical path where the optical output beam from the object is transferred to the displacing means because displacing both the reference and

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object beam allow for faster stepping of the phase shift between the two and allow for more depth in scanning in an OCT apparatus.



(modified figure 3)

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHON D. COOK whose telephone number is (571)270-1323. The examiner can normally be reached on Mon-Fri 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on (571)272-2287. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jonathon Cook  
Patent Examiner  
AU:2886  
February 5<sup>th</sup>, 2009

**/TARIFUR R CHOWDHURY/  
Supervisory Patent Examiner, Art Unit 2886**